

FILED
KENNETH J. MURPHY
CLERK
TO BE GIVEN TO SOMEONE OTHER THAN
JUDGE HOGAN OR BECKWITH TO RULE ON
2003 SEP -4 PM 4:11

U.S. DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WEST DIVISION CINCINNATI
WESTERN DIVISION AT CINCINNATI, OHIO

Shirley A. McClure

) Case No. C-1-01-751

Plaintiff

vs.

Gannett Media Technologies
International (GMTI), et al

Defendants

) Demand To Remove
Judge Timothy Hogan
With Request For A Hearing
Before An Impartial
Visiting Judge

On March 21, 2003 I the Plaintiff Shirley McClure filed an Affidavit of Prejudice *clearly* requesting that Judge Timothy Hogan be *removed* from my case and clearly stating the reasons for this request (a copy of the affidavit is attached). When I went to file this motion, I asked the court for instructions on how to file this, since I logically wouldn't expect it to go to Judge Hogan because he wouldn't make a judgment against himself. I was told to file it as usual with the clerk's office and when it was seen to be a request for removal of Hogan, it would be passed to another judge. But this didn't happen.

Removal, not Recusal

However, I have received an Order filed July 27, 2003 signed by Judge Hogan in which he states on page 1, line 3 that he construes my request as a motion for recusal. But he plainly *chose* to construe it as a motion for recusal because he didn't want to be removed. There is nothing to indicate that it was a motion for recusal because on the first line of the 2nd paragraph of page 1, it clearly states in all capital letters that "*PLAINTIFF HEREBY MOVES THAT JUDGE HOGAN BE REMOVED FROM THIS CASE.*" And then I proceeded to list the reasons

why he should be removed. Then again the first paragraph of the last page (page 4) I make the following statement:

"For all the reasons stated above and in documents attached, I THE PLAINTIFF HEREBY DEMAND THAT JUDGE HOGAN BE REMOVED FROM THIS CASE DUE TO THE PREPONDERANCE OF THE EVIDENCE OF PREJUDICE AGAINST ME, showing undue favor to and in collusion with the defendants. Judge Hogan should be removed so that I may receive the opportunity for a fair and impartial hearing, and opportunity for justice that I am rightfully entitled to by law, which I believe will all be lost in the event that my case continues under Judge Hogan."

Finally, at the bottom of page 4, the next to the last line , I state that "*I hereby request that Judge Hogan be removed.*" And that "*I respectfully ask that an impartial visiting judge be allowed to hear my case.*" I ask you, how much clearer could I be?

There is no possible way that Judge Hogan could construe that this was a request for recusal. He just simply chose to ignore that it was a request for removal and treat it as a request for recusal, this is abuse of his discretion because he doesn't want to be off the case, and this only adds to my proof that he is prejudiced against me and shows undue favor toward the defendants.

On the last line of the last page, page 5, Judge Hogan orders that my motion for "recusal" be denied. However, THIS DOES NOT APPLY BECAUSE MY MOTION WAS CLEARLY A REQUEST FOR REMOVAL AND SHOULD BE ADDRESSED BY ANOTHER JUDGE. It's ridiculous to think that Judge Hogan should be allowed to make a judgment on accusations against himself, and that he would even admit to being prejudiced and abusing his discretion.

So I am hereby requesting that this motion be dealt with as it should have been the first time, by being given to a different judge.

Personal Prejudice Too, Not Just Judicial

There is, however, one aspect of Judge Hogan's order filed June 26, 003 that I want to address. In paragraph 4 on page 2 Judge Hogan states that "*the Court finds that Plaintiff's affidavit is not legally sufficient.*" And that "*To be legally sufficient under §144, assertions in an affidavit must be definite with respect to time, place, persons, and circumstances.*", indicating that this wasn't done, but this isn't true.

On page 3 the statement is made that "*the affidavit must allege facts showing a personal bias as distinguished from a judicial one...*" and continuing in page 2, that "*The affidavit submitted by Plaintiff does not allege any facts regarding personal bias on the part of the*

undersigned. Rather, Plaintiff's affidavit outlines what Plaintiff considers to be unfair decisions made in this case ...”

So Judge Hogan is saying that my accusations of prejudice are without merit because they aren't of a *personal* nature, but only judicial. However, I contend that they *are also personal* because of how decisions are made regarding the Plaintiff in comparison with the defendant. Here is one of several examples I have told the court about previously:

Example 1 of Personal Bias

When my original deposition date in March of 2002 was postponed, the defendant Mr. Roberts *demanded that I take my deposition two days later*, without consulting me as to my availability, considering I work a full time secular job. Please note that at this time *the discovery deadline was 6 months away*, so there was no urgency in that regard. When I noted this to the court as part of my harrasment complaint (Motion for Sanctions filed March 19, 2002) against defendants' attorney Michael Roberts, the court thought his actions were perfectly all right.

However, *when I the Plaintiff had only two days to give notice to defendants to depose them because the discovery deadline was at the end of the week*, of which all the defendants were very well aware (and which was made necessary because defendants' attorney and the defendants had illegally obstructed the depositions the week before) – Judge Hogan admonished me the Plaintiff for this, blatantly demonstrating prejudice against me and showing undue favor to the defendants!

Again, this is but one of several examples of how Judge Hogan treats me differently from the defendants in the same type of situations, and this makes it personal. If something is wrong for me to do, then it should be wrong for the defendants to do also. Please remember, I have proof of all this, I am not expecting you to just take my word, like the judge prejudiciously takes the word of the defendant Mr. Roberts, with out a shred of proof to back him up.

Example 2 of Personal Bias

In Judge Hogan's “Report and Recommendation” filed March 20, 2002 he made light of *my credibility*, stating that there was no evidence other then my “word” for claims I made, even though I supplied at least 2 documents showing proof of what I said (and even Judge Beckwith commented against him about this on page 13 of her Order filed July 26, 2002). This proves a *personal bias* against me.

However, again demonstrating his personal bias against me regarding comparison of treatment of me versus his treatment of the defendants, Judge Hogan completely ignored my

proof of the *Defendants' gross lack of credibility* when GMTI's president Dan Zito falsely swore in his affidavit dated December 12, 2001 that GMTI's main office was located in Ohio, when in reality their parent company, Gannett, also named in the lawsuit, is located in Virginia, thereby deceitfully trying to get my case dismissed due to a false claim of lack of diversity.

Conclusion

So again, Judge Hogan's Order of July 27, 2003 does not apply because my motion was clearly a request for removal and should be addressed by another judge. So I am hereby requesting that this motion be dealt with as it should have been the first time, by being given to a different judge, preferably a visiting one.

Do Not Give to Judge Beckwith Either - Not Impartial

And this should not be given to Judge Beckwith, because she too has shown undue favor to the defendants by overlooking very serious judicial misconduct on the part of the defendants, and I have asked her to recuse herself as stated on page 62 of my Motion for Default filed March 20, 2003. Below are the reasons for this:

Example 1

Judge Beckwith *completely ignored defendant Dan Zito's perjured affidavit* (Violation of Law) concerning diversity. When I the Plaintiff exposed Mr. Zito's affidavit to be perjury and he subsequently recanted his sworn testimony, Judge Beckwith biasly indicated that she felt defendant Mr. Zito's obvious lie was merely a "mistake" and gave him credit for not letting the "mistake" stand and "correcting" his testimony, (although it was I the Plaintiff who exposed his perjury, thereby giving him no choice). So Judge Beckwith did this rather than ordering sanctions against the defendants for perjury or granting me the requested default I deserved. Mr. Zito's affidavit was not in accordance with Federal Rule of civil procedure 11 that states it should not be "presented for any improper purpose, such as to harass or cause unnecessary delay or needless cost in litigation" since it was proven to be a lie not a mistake, it broke this rule. And it's important to keep in mind that Dan Zito is the President of GMTI, so there's no way he didn't know where his company headquarters are located. He committed outright perjury and Judge Beckwith blatantly ignored this, showing undue partiality to the defendants.

Example 2

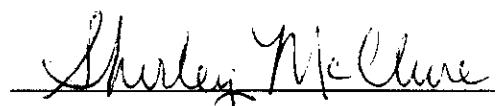
When my original deposition date in March of 2002 was postponed, defendants' attorney Michael Roberts harassed me the Plaintiff by calling me 5 times within 7 hours, including harassing one of my coworkers, demanding that she go and find me when I was away from my desk. *The court disregarded my complaint ignoring all the evidence presented, of this judicial and illegal misconduct of harrasment*, including a tape recording (recorded with defendant's permission by law) of these calls and my coworkers' affidavit, swearing to this harassment.

Of note is that the primary problem is Judge Hogan, proven to be in collusion with the defendants to produce blatant prejudicial decisions. Judge Beckwith, however, is involved primarily in that many of her decisions, like Judge Hogan's, are biased in favor of the defendants. and therefore she should be removed from the case also.

Judge Beckwith has shown undue partiality toward the defendants by allowing them to commit blatant wrongdoing such as perjury and harassment and letting them go unpunished. The case should have been decided against the defendants right there and then. I still have trouble believing that I have witnessed 2 judges treating perjury and harassment and proof of wrongdoing as if it's absolutely nothing.

Judge Hogan claims that I have no evidence of *personal* prejudice or bias, just a complaint about what I feel are unfair *judicial* decisions against me. However, if the reasons for the judicial decisions against me are due to partiality toward the defendants, it becomes personal because it denies me justice in this case, resulting in a violation of my civil rights.

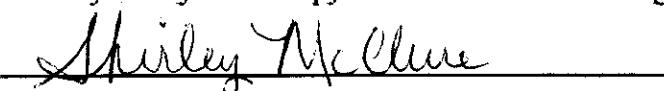
Once again, Judge Hogan needs to be removed from my case in the interest of justice and fairness, and I am hereby requesting a Hearing on this matter before an impartial visiting judge, preferably a disciplinary one, monitored by an outside party.



Shirley McClure
Shirley McClure, Plaintiff
Attorney Pro Se

CERTIFICATE OF SERVICE

I hereby certify that a copy of this document is being sent to the attorney for the Defendants.



Shirley McClure